ADVERSE POSSESSION.—RECOGNITION OF TITLE IN ANOTHER.—Where before the running of the statutory period one holding adversely accepted a lease from a third party which embraced the property held adversely, *Held,* though this was an admission that he did not hold the land as his own, yet such admission was not conclusive against him in favor of a stranger to the lease and did not prevent him from proving his adverse possession. *Mitchell et ux.* v. *McShane Lumber Co., et al.,* 220 Fed. 878.

The decision of the court in the principal case rests on the theory that as the lease was between the plaintiff and a third party, it is permissible that he contradict or explain away the admission shown by his signing the lease and contract, and that the instrument did not give rise to an estoppel upon him in favor of the defendant in the suit, who was a stranger to the instrument. It is universally agreed that in order that an adverse holding may ripen into title it is essential that the holding be continuous for the statutory period. *Ewing* v. *Burnett,* 11 Pet. 53. The continuity of the possession may be broken in three ways only, (1) by some act of the real owner, (2) by some act of a stranger, (3) by some act of the adverse claimant. *Doe* v. *Anderson,* 79 Ala. 215; *Normant* v. *Eureka Co.,* 98 Ala. 189. The principal case states that the recognition and acknowledgement by the adverse claimant of a superior title in another, a stranger, is not such an action on the part of the stranger or the adverse claimant as will break the continuity. While it is recognized that the acknowledgement by the adverse claimant, during the running of the statutory period, of title in the true owner will break the continuity of possession, *Daveis* v. *Collins,* 43 Fed. 31; *Campau* v. *Lafferty,* 43 Mich. 429; there appears to be no case wherein the recognition was of title in a third party, i. e. a party other than the true owner. Passages in the cases of *Risher* v. *Madsen,* 94 Neb. 72, and *Chambers* v. *Bessent,* 17 N. Mex. 487, which appear to enunciate such a doctrine, would not seem to be justified on the facts of those cases. It would appear to be well established that if the claimant acquiesces in the entry and taking of possession by a third person who claims to own the land, this will interrupt his adverse possession, even though such third person subsequently surrenders possession to the claimant. *Ross* v. *Goodwin,* 88 Ala. 390; *Stephenson* v. *Wilson,* 50 Wis. 95.

BANKRUPTCY.—ACKNOWLEDGEMENT OF A BARRED INDEBTEDNESS.—Where a bankrupt, in contemplation of bankruptcy proceedings, had prior thereto written to his sister, a creditor, acknowledging the existence of a debt owed by him to her, which was barred by the statute of limitations, *held,* that in the absence of knowledge on her part concerning his critical financial condition or contemplated bankruptcy at such time, the bankrupt's act *per se* was not in fraud of his creditors or the Bankruptcy Act of 1898, and that such acknowledgement was effective to nullify the statute of limitations, revive the debt and render it a provable claim against the estate. *In re Blankenship,* (D. C. Cal. 1915) 220 Fed. 395.

The trustee affirmed that this deliberate recognition of the outlawed obligation, otherwise unenforceable—not because of non-existence but for

the reason the remedy had been taken away—was made enforceable by the bankrupt's conduct and hence was fraudulent. To this position the court refused to accede, preferring to believe that the claim was not unenforceable until "the bankrupt had already pleaded the statute in bar of the indebtedness, or had determined so to do." Had the bankrupt always intended to pay the indebtedness and had reached a decision to forego the advantage of this special defense in case suit were brought, by this act he has not altered his position. He could not, prior to bankruptcy, have been compelled to plead the statute of limitations, since it is a matter of privilege exercisable at his option. If the bankrupt had pleaded the statute prior to his bankruptcy, and later in contemplation thereof, attempted to rehabilitate such claim or moral obligation, merely that the owner might participate in the dividends to the detriment of other lawful creditors, an entirely different situation would have been confronted, concerning which the decision intimates a likelihood that the court would find fraud from such facts alone. But in the instant case, no evidence of fraud was available aside from the act itself here complained of, and the court insists that it was to be explained consistently on the theory that no fraud existed. The general principle has long been recognized that a debt or claim once valid and otherwise provable in bankruptcy, but barred by the operation of the statute of limitations in the state where the alleged bankrupt is domiciled and the bankruptcy proceeding is pending, cannot be allowed. *In re Lipman,* 94 Fed. 353; *In re Resler,* 95 Fed. 804; *In re Putnam,* 193 Fed. 464; *In re Wooten,* 118 Fed. 670; *Pace's Trustee* v. *Pace* (Ky. 1915), 172 S. W. 925; *Ex Parte Dewdney, Ex Parte Seaman,* 15 Ves. Jr. 479; *In re Noesen,* Fed. Cas. 10288. The fact that the debt is not barred under the statute of some other state, i. e., that in which the creditor resides or of which both parties were inhabitants when the contract was made, is of no avail. *In re Kingsley,* Fed. Cas. 7819; *Hargadine-McKittrick Dry Goods Co.* v. *Hudson,* 122 Fed. 232, 234; *In re Hardin,* Fed. Cas. 6048; *In re Resler,* 95 Fed. 804; *sed vide* argument in support of contrary rule in case of *In re Ray,* Fed. Cas. 11589. Including in the schedule of debts a claim already barred is not such formal recognition of its validity as to make it provable against the bankrupt's estate, to the prejudice of other creditors; but it devolves upon the trustee in bankruptcy to oppose the allowance of the claim on the ground of limitations, in behalf of the creditors. *In re Wooten,* 118 Fed. 670; *In re Lipman,* 94 Fed. 353; *In re Resler,* 95 Fed. 804; *In re Banks,* 207 Fed. 662; *In re Kingsley,* Fed. Cas. 7819; *In re Ray,* Fed. Cas. 11589; *In re Hardin,* Fed. Cas. 6048.

BANKRUPTCY.—PARTNERSHIP AND INDIVIDUAL CREDITORS.—Two partners, each acting with the consent of the other, withdrew money from the assets of the partnership on the day preceding its adjudication in bankruptcy, at a time when the partners were insolvent, but prior to filing a petition against either of them. Demand by trustee in bankruptcy that the same be returned was refused. *Held,* that there was no means of compelling restitution, as the Bankruptcy Act of 1898, sec. 5f, providing that the net proceeds of the partnership property shall be appropriated to the payment of partnership debts,